IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.874 OF 2003

Shankar Punja Gurgude & Ors. ...Appellants

Vs.

Shripat Tukaram Dhanvate & Ors. ...Respondents

Ms Manali Patwardhan i/b Mr.Ramesh Dube-Patil for the Appellants
Mr.Girish B. Badiga i/b Mr.P.L.Bhujbal for the Respondent Nos.10-B, 10-D(B), 10-E to 6-A, 7(2), 3-C

CORAM: A.S.OKA, J.
DATED: MAY 5,2006.

P.C.:

1. Heard Advocate for the Appellants. The Appellants are the legal representatives of the original Defendant No.1. The Trial court passed a decree for partition holding that the Defendant No.1 has 1/11th share in the suit property. The Appeal preferred by the original Defendant No.1 in the District Court has been dismissed.

2. The learned Advocate for the Appellants submitted that the decree for partition could not have been passed in view of the provisions of section 8-A of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 as effect of partition will be to reduce the shares into the fragments. The other submission of the learned Advocate for the Appellants is that the plea of adverse possession was

raised by the Appellant No.1-Defendant No.1 in both the Courts, and this plea is not properly considered by the courts below.

3. I have considered the submissions. The Appellate Court has noted in its Judgment that the only plea raised in the Appeal by the Defendant No.1 was that of adverse possession. The Appellate Court after considering the evidence on record has negatived the said plea. The Appellate court has held that there was no ouster. No fault can be found with said finding of the Appellate court on the plea of adverse possession.

4. The other submission made by the Appellants was not canvassed before the first Appellate Court as it is noted in the Judgment that adverse possession was the only plea raised. Hence, the said submission cannot be considered at this stage.

5. No substantial question of law arises. Second Appeal is dismissed with no order as to costs.

Judge.